



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/367,481	08/13/99	FUSHIKI	T 35859.1
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HM12/0922  
INTELLECTUAL PROPERTY GROUP  
GRAHAM & JAMES  
885 THIRD AVENUE  
NEW YORK NY 10022

EXAMINER
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COE, S

ART UNIT	PAPER NUMBER
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1651

DATE MAILED:

09/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Advisory Action

Application No.  
09/367,481

Applicant(s)

Fushiki et al.

Examiner

Susan Co

Group Art Unit  
1651



THE PERIOD FOR RESPONSE: [check only a) or b)]

a) ☒ expires 31 months from the mailing date of the final rejection.

b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Sep 5, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☐ will not be entered because:

☐ they raise new issues that would require further consideration and/or search. (See note below).

☐ they raise the issue of new matter. (See note below).

☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached "Supplement to Advisory Action"

☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 24-39

☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Other

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### **SUPPLEMENT TO ADVISORY ACTION**

1. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

2. All of applicant's arguments regarding the 103(a) rejection of record have been fully considered but are not persuasive. Regarding applicant's statement in the first paragraph of page 2 of the current response, claims 24-39 stand rejected over US Pat. No. 3,764,692 in view of US Pat. No. 5,536,516 and McCarty. Since all of these claims are rejected using the same references, the ground of rejection is the same.

Applicant argues that the teaching of Dohm shows that McCarty's hypothesis regarding HCA increasing endurance is incorrect. However, Dohm shows no results that directly disprove McCarty's hypothesis because Dohm does not study the effects of HCA on exercise endurance. Since Dohm does not set forth any data concerning hydroxycitric acid, a person of ordinary skill would not be able to categorically conclude from Dohm that the hypothesis set forth by McCarty is incorrect. In fact, Dohm's conclusions seem to defy logic. Dohm reports that fasting in rats increases endurance. These results seem contrary to common sense and a person of ordinary skill in the art would arguably be more inclined to dismiss Dohm's conclusions than the well-reasoned and well-supported hypothesis put forward by McCarty.

Applicant also argues that McCarty's hypothesis is not well supported because of selective use of references. Applicant cites Brunengraber et al. as an example of one such

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reference. However, a copy of the Brunengraber article has not been presented to the examiner for consideration; thus, the arguments based on this article cannot be fairly considered.


3. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 7:30 to 5:00 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SDC  
September 21, 2000



FRANCISCO PRATS  
PRIMARY EXAMINER